

International Human Rights Jurisprudence on Issues relating to Drug Use and Harm Reduction

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1. UNITED NATIONS SYSTEM

1.1 Human Rights Committee (HRC)

Human Rights Committee 'General Comment No. 6: The right to life (Art. 6)' (30 April 1982) UN Doc No

The HRC states that Article 6 creates positive obligations on States to protect life. In this context, "the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and **epidemics**." (at para. 5, emphasis added)

Human Rights Committee 'General Comment No. 8: Right to liberty and security of persons (Article 9)' (30 June 1982) UN Doc No

The HRC states clearly that the protections under Article 9 apply to all forms of detention, including those for "drug addiction". "[T]he right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention." (at para. 1)

Human Rights Committee 'Concluding Observations: Ukraine' (28 November 2006J) UN Doc No CCPR/C/UKR/CO/6 at para. 11.

The HRC expresses concern about high rates of HIV in prisons and inadequate medical care, and calls for decreased prison populations.

Human Rights Committee 'Concluding Observations: Thailand' (8 July 2005) UN Doc No CCPR/CO/84/THA at paras. 10, 14, 24.

The HRC expresses concern over the extrajudicial killing campaign against people who use drugs (at paras. 10, 24). Also the HRC states definitively for the first time that capital punishment for drug offences is in violation of the ICCPR (at para. 14).

Human Rights Committee 'Concluding Observations: Kenya (29 April 2005) UN Doc No CCPR/CO/83/KEN at para. 15.

The HRC expresses concern that high numbers of deaths from HIV/AIDS, resulting from unequal access to treatment, raises issues under Article 6. It recommends "The State party should take measures to ensure that all those infected with HIV have equal access to treatment." (at para. 15) Although not referring to people who use drugs, this is still an important principle for all persons living with HIV/AIDS.

Human Rights Committee 'Concluding Observations: Mauritius (27 April 2005) UN Doc No CCPR/CO/83/MUS at para. 15.

HRC expresses concern that bail is not allowed under for persons arrested or held in custody for the sale of drugs, especially where they have already been convicted of any drug offence. The HRC recommends that the State party should "review the Dangerous Drugs Act 2000 in order to enable judges to make a case-by-case assessment on the basis of the offence committed and to give full effect to the provisions of article 9, paragraph 2, of the Covenant." (at para. 15)

Human Rights Committee 'Concluding Observations: Namibia' (30 July 2004) UN Doc No CCPR/CO/81/NAM at para. 10.

The HRC expresses concern that State "efforts" to address HIV are "not adequate to the magnitude of the problem", therefore raising an issue under Article 6. The HRC recommends that, "The State party should pursue its efforts to protect its population from HIV/AIDS. It should adopt comprehensive measures encouraging and facilitating greater number of persons suffering from the disease to obtain adequate antiretroviral treatment." (at para. 10) Although not referring to HIV transmission via IDU, this is a principle that could be applied elsewhere.

Human Rights Committee 'Concluding Observations: Uganda' (4 May 2004) UN Doc No CCPR/CO/80/UGA at para. 14.

The HRC expresses concern "about the effectiveness of...measures and the extent to which they guarantee access to medical services, including antiretroviral treatment, to persons infected with HIV", therefore raising an issue under Article 6. "The State party is urged to adopt comprehensive measures to allow a greater number of persons suffering from HIV/AIDS to obtain adequate antiretroviral treatment." (at para. 10)

Human Rights Committee 'Concluding Observations: Ireland' (24 July 2000) UN Doc No A/55/40, paras.422-451 at para 17.

"The Committee expresses concern that the seven-day period of detention without charge under the Drug Trafficking Act raises issues of compatibility with article 9, paragraph 1." (at para. 17)

Human Rights Committee 'Concluding Observations: Peru' (15 November 2000) UN Doc No CCPR/CO/70/PER at para. 13.

"[T]he Committee considers that detention for up to 15 days in cases of...drug trafficking ...does not comply with article 9 of the Covenant."

Human Rights Committee 'Concluding Observations: Kuwait' (27 July 2000) UN Doc CCPR/CO/69/KWT at para. 13.

"The Committee expresses serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug-related crimes."

1.2 Committee on Economic, Social and Cultural Rights (CESCR)

Committee on Economic, Social and Cultural Rights 'General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)' (11 August 2000) UN Doc No E/C.12/2000/4 at paras 11, 12.16, 18, 30, 34, 37, 43—44, 50, 54.

Latest General Comment on the right to health. No comment on IDU *per se*, but describes many principles of access and non-discrimination that can be used to advocate for harm reduction services.

General Comment 14 mentions HIV in several places, including “The right to prevention, treatment and control of diseases” which “requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS”. (para. 16)

It also notes the importance of “the participation of the population in all health-related decision-making at the community, national and international levels” (paras. 11, 54) and of non-discrimination to access to health care (paras. 11(b), 18).

While the ICESCR obligates States only to progressively realise the right to health, General Comment 14 notes that States parties do have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind. (para. 30).

“In particular, States are under the obligation to *respect* the right to health by, *inter alia* refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women’s health status and needs.” (para. 34)

“The obligation to *fulfil (facilitate)* requires States *inter alia* to take positive measures that enable and assist individuals and communities to enjoy the right to health.” (para. 34) The CESCR describes the obligation “To take measures to prevent, treat and control epidemic and endemic diseases” as a core obligation under the Covenant (para. 44), as well as the obligation “To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population...[that] shall give particular attention to all vulnerable or marginalized groups.” (para. 43)

The CESCR identifies “Violations of the obligation to respect [the right to health] are those State actions, policies or laws that contravene the standards set out in article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. Examples include the denial of access to health facilities, goods and services to particular individuals or groups as a result of de jure or de facto discrimination; the deliberate withholding or misrepresentation of information vital to health protection or treatment; the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health; and the failure of the State to take into account its legal obligations regarding the right to health when entering into bilateral or multilateral agreements with other States, international organizations and other entities, such as multinational corporations.” (para. 50)

Committee on Economic, Social and Cultural Rights ‘Concluding Observations: Tajikistan’ (24 November 2006) UN Doc No E/C.12/TJK/CO/1 at paras 38, 70.

The CESCR expressed concern with “the rapid spread of HIV...in particular among drug users, prisoners, sex workers”. It cites “factors such as a lack of basic knowledge about the disease and its transmission (particularly among rural women), breaches of confidentiality relating to medical information, and lack of appropriate training for health care workers contribute to the significant stigma and discrimination surrounding the disease and, ultimately, the spread of HIV. (para. 38)

“The Committee recommends to the State party to conduct education campaigns on HIV/AIDS through the media, school curricula and other means, aimed at (1) ensuring that individuals (particularly those belonging to high-risk groups) have the necessary

information to protect themselves from the disease, and (2) reducing the stigma and discrimination surrounding the disease and the groups most affected by it, such as injection drug users, prisoners, commercial sex workers and returning migrants. The Committee also recommends that the State party establish time-bound targets for extending the provision of free testing services, free treatment for HIV and harm reduction services to all parts of the country.” (at para. 70) **This is the only time a UN human rights treaty body has specifically called for the expansion of harm reduction on a national basis.**

1.3 Committee on the Rights of the Child (CRC)

Committee on the Rights of the Child ‘General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child’ (1 July 2003) UN Doc No CRC/GC/2003/4.

This General Comment details the Committee’s holistic approach to the right to health of children and young people. As explained by in the Introduction, “The Committee understands the concepts of ‘health and development’ more broadly than being strictly limited to the provisions defined in articles 6 (right to life, survival and development) and 24 (right to health) of the Convention. One of the aims of this general comment is precisely to identify the main human rights that need to be promoted and protected in order to ensure that adolescents do enjoy the highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and in society at large.”

It addresses HIV prevention in a number of places, although strictly within the context of sexual transmission. However, it does specifically cite HIV status as a prohibited grounds for discrimination (at para. 6). The one mention of drugs (at para. 23) specifies the obligation of States Parties of “strictly controlling firearms and restricting access to alcohol and drugs.” Interestingly, it does not specify that drug control in this regard must be pursued through criminalization. Indeed, as drugs are listed together with alcohol and firearms, both of which are regulated by the State to limit their access to persons under eighteen, it creates a reasonable argument that a legalization/decriminalization approach is not inconsistent with the obligations under the Convention in this regard.

Committee on the Rights of the Child ‘General Comment No. 3: HIV/AIDS and the rights of the child’ (17 March 2003) UN Doc No CRC/GC/2003/3.

The CRC’s main commentary on the issue of HIV and young persons, and details the obligation of States to provide HIV prevention, care and treatment based on various Articles of the Convention (i.e. the right to life, the right to health, the right to education, the right to privacy, etc.)

Although the majority of the General Comment focuses of sexual transmission, the Committee does identify that “Children who use drugs are at high risk” (at para. 2) and that “Injecting practices using unsterilized instruments further increase the risk of HIV transmission.” (at para. 39)

The General Comment is particularly useful in that it provides a balance between Art. 33 (the right to be protected from illicit drugs) and Art. 24 (the right to health). Some anti-drug campaigners (incorrectly) cite Art. 33 to attack harm reduction measures for young persons. However, the General Comment states explicitly that Arts. 24 and 33 are not mutually contradictory.

The CRC notes that “In most countries, children have not benefited from pragmatic HIV

prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. **Consistent with the rights of children under articles 33 and 24 of the Convention, States parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances.**" (at para. 39, emphasis added) Therefore, it can clearly be argued that the State obligation to provide HIV prevention/harm reduction measures exists alongside its obligation to protect children and young people from illicit drugs.

Committee on the Rights of the Child 'Concluding Observations: Armenia' (30 January 2004) UN Doc No CRC/C/15/Add.225 at paras. 47—48, 62—63.

The CRC expresses concern at the criminalization of young drug users, and "urges the State party to ensure that child drug abusers are not criminalized, but treated as victims in need of assistance towards recovery and reintegration" (at para. 63). The CRC "recommends that State party reinforce its efforts to...combat HIV/AIDS", although it only discusses this in terms of sexual transmission. (at paras. 47—48).

Committee on the Rights of the Child 'Concluding Observations: El Salvador' (4 June 2004) UN Doc No CRC/C/15/Add.232 at paras. 53—54.

The CRC recommends that the State party reinforce its efforts to combat HIV/AIDS, including though: (a) Preventive programmes." No specific reference to IDU however.

Committee on the Rights of the Child 'Concluding Observations: Sao Tome and Principe' (4 June 2004) UN Doc No CRC/C/15/Add.235 at paras. 46—47.

The CRC raises general concern about HIV/AIDS and makes some general recommendations about improving HIV/AIDS education.

Committee on the Rights of the Child 'Concluding Observations: Indonesia' (30 January 2004) UN Doc No CRC/C/15/Add.223 at paras. 58—59, 73—74.

The CRC raises concern about lack of HIV/AIDS education and makes some general recommendations about improving HIV/AIDS prevention, although discussed in the context of sexual transmission with no direct comment on IDU (at paras. 58—59). The CRC also expresses concern that young people who use drugs "are treated as criminals rather than victims", and calls for expanded rehabilitative services, and the provisions of "accurate and objective information about the harmful consequences of substance abuse" (at paras. 73—74).

Committee on the Rights of the Child 'Concluding Observations: Brunei Darussalem' (27 October 2003) UN Doc No CRC/C/15/Add.219 at paras. 53—54.

The CRC expresses concern "that children abusing drugs may be placed in a closed institution for a period of up to three years" and "recommends that the State party develop non-institutional forms of treatment of children who abuse drugs and make the placement of children in an institution a measure of last resort."

Committee on the Rights of the Child 'Concluding Observations: Panama' (27 October 2003) UN Doc No CRC/C/15/Add.217 at paras. 54—55, 72—73.

The CRC calls for the State to "Provide children with accurate and objective information about substance use, including hard drugs and tobacco, and protect children from harmful misinformation" (at para. 73). Although this is made within a drug prevention context so it is not clear what the Committee would view as "harmful misinformation" (in other COs this has been used to include alcohol and tobacco advertising, for example). It also recommends that the State "strengthen its efforts to address adolescent health issues...[including those] to prevent and combat HIV/AIDS and the harmful effects of drugs." (at para. 55)

Committee on the Rights of the Child 'Concluding Observations: Estonia' (17 March 2003) UN Doc No CRC/C/15/Add.196 at paras. 40, 46.

The CRC expresses concern at "the increasing number of HIV-infections among injecting drug users" (at para. 40), although the recommendations in this section do not address HIV prevention in general or IDU in particular. The CRC also expresses concern at the "rise in the number of injecting drug users" (at para. 46) and "encourages the State party to continue its efforts to provide children with accurate and objective information about substance use", although the recommendation appears to refer to drug prevention education rather than HIV prevention/harm reduction.

Committee on the Rights of the Child 'Concluding Observations: Ukraine' (9 October 2002) UN Doc No CRC/C/15/Add.191 at paras. 29—32, 57—59, 68.

The CRC discusses HIV/AIDS issues in some detail, recommending that the State "Increase its efforts to prevent HIV/AIDS" (at para. 59e). No direct reference to either IDU or harm reduction however.

Committee on the Rights of the Child 'Concluding Observations: St. Vincent and the Grenadines' (13 June 2002) UN Doc No CRC/C/15/Add.184 at paras. 40—41, 50—51.

The CRC expresses concern about adolescent health risks including HIV/AIDS and "drug abuse", although make no clear recommendations in this regard (at paras. 40—41). Later the Committee expresses concern "that some of the children abusing drugs and using substances are placed, for this reason, in mental health institutions" and recommends that "child drug and substance abusers are not placed in mental institutions unnecessarily and have access to effective structures and procedures for treatment, counselling, recovery and reintegration." (at paras. 50—51)

1.4 Committee on the Elimination of Racial Discrimination (CERD)

Committee on the Elimination of Racial Discrimination 'General recommendation XXXI on the prevention of racial discrimination the administration and functioning of the criminal justice system' (2005) UN Doc No A/60/18, pp. 98-108 at section I(A)(1)(d)

"1. States parties should pay the greatest attention to the following possible indicators of racial discrimination: (d) The proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime and offences related to

drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society.”

Committee on the Elimination of Racial Discrimination ‘Concluding Observations: Estonia’ (19 October 2006) UN Doc No CERD/C/EST/CO/7 at para 17.

CERD expresses concern at the “high rate of HIV/AIDS among persons belonging to minorities” and “encourages the State party to take further measures to combat HIV/AIDS.”

Committee on the Elimination of Racial Discrimination ‘Concluding Observations: South Africa’ (19 October 2006) UN Doc No CERD/C/ZAF/CO/3 at para 20.

CERD expresses concern at “the high rate of HIV/AIDS among persons belonging to the most vulnerable ethnic groups” and “recommends that the State party strengthen its programmes in the field of health, with particular attention to minorities, bearing in mind their disadvantaged situation resulting from poverty and lack of access to education, and encourages the State party to take further measures to combat HIV/AIDS.”

Committee on the Elimination of Racial Discrimination ‘Concluding Observations: South Africa’ (2 June 2003) UN Doc No CERD/C/62/CO/11 at para. 18.

CERD expresses concern at “the rapid spread of this disease [HIV] which affects the population throughout the country, particularly marginalized ethnic groups” and “recommends that the State party continue to develop strategies in this regard and that, in this context, due consideration be given to the specific situation of women.”

1.5 Working Group on Arbitrary Detention

UN Commission on Human Rights ‘Report of the Working Group on Arbitrary Detention’ (12 December 2005) UN Doc No E/CN.4/2006/7 at paras 66, 84

Working Group expresses concern that bail restrictions such as employment or stable residence are often unrealistic for people who use drugs to meet. This results in being denied bail, and as a result a greater likelihood of conviction at trial on that basis. The bail system therefore compromises due process rights for this population. At para 84 the Report recommends that States “make every effort” to avoid the over-incarceration of “vulnerable groups”. People who use drugs have typically been included under this heading by the Working Group.

UN Commission on Human Rights ‘Report of the Working Group on Arbitrary Detention’ (1 December 2004) UN Doc No E/CN.4/2005/6 at paras 47, 53.

Reiterates concerns raised in the previous year’s Report on arbitrary detention of people who use drugs and the need for judicial oversight in these cases to challenge the legality of that detention. At para 53 the Report notes that Art. 9 of the ICCPR applies not only to those charged with criminal offences but also to detention for “drug addiction”

UN Commission on Human Rights ‘Report of the Working Group on Arbitrary Detention’ (15 December 2003) UN Doc No E/CN.4/2004/3 at paras 73—74, 87.

Expresses concern at the arbitrary detention of “drug addicts” and “people suffering from

AIDS". At para 87 it recommends that, "With regard to persons deprived of their liberty on health grounds, the Working Group considers that in any event all persons affected by such measures must have judicial means of challenging their detention."

1.6 Special Rapporteur on Health

Commission on Human Rights 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt' (3 March 2006) UN Doc No E/CN.4/2006/48 at paras. 22—61, 65—78.

In his Annual Report, the Special Rapporteur on Health articulates "A human rights-based approach to health indicators". He argues that "In combination, various indicators can help a State monitor the progressive realization of the right to health. In short, a combination of appropriate indicators may together constitute a human rights-based approach to health indicators." (at para. 50) The Report sets out a methodology for using health indicators as "right to health indicators" and encourages NGOs to adopt the human-rights based approach to health indicators he describes (at para. 73).

Commission on Human Rights 'Report submitted by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Paul Hunt: Addendum—Mission to Romania' (21 February 2005) UN Doc No E/CN.4/2005/51/Add.4 at paras. 42, 47—54.

In his Report on Romania, the Special Rapporteur on Health expresses concern that "The stigma associated with commercial sex work and injecting drug use, for example, affects how people engaged in these activities are often treated by health-care workers, especially when requesting services such as tests for sexually transmitted infections" and encourages the Government to take actions to combat discrimination that creates barrier to services (at para. 42).

Expressing concern at increasing rates of HIV related to IDU (at para. 47), the Special Rapporteur calls for "expanded access to essential commodities, Including...sterile injecting equipment; [and] harm reduction efforts related to drug use (at para. 50).

Commission on Human Rights 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the attainable standard of physical and mental health, Paul Hunt: Addendum – Summary of cases transmitted to Governments and replies received' (2 February 2005) UN Doc No E/CN.4/2005/51/Add.1 at para. 68.

Cites correspondence from the Special Rapporteur to the Government of Thailand. "[T]he Special Rapporteur was concerned that the Anti-Narcotics Campaign, coupled with limited access to harm-reduction services, had inadvertently created the conditions for a more extensive spread of the [HIV] virus in Thailand." He welcomed the Government's agreement to expand harm reduction programmes and "to change the approach in Thailand by treating injecting drug users as patients rather than criminals.... He remained concerned, however, at reports of the punitive implementation of the Government's policy aimed at eradicating drug use. This had reportedly generated a climate of fear that had driven drug users deeper underground and forced them beyond the reach of both prevention and treatment efforts."

1.7 Special Rapporteur on Violence Against Women

Commission on Human Rights 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44: Addendum – Report of the mission to the United States of America on the issue of violence against women in state and federal prisons' (4 January 1999) UN Doc No E/CN.4/1999/68/Add.2 at paras.

In her mission to inspect US women's prisons, the Special Rapporteur on Violence Against Women makes very strong commentary on the effects of drugs laws on women and children. Although not examining HIV/AIDS or harm reduction *per se*, the Special Rapporteur speaks out passionately of the effects of prohibitionist drug laws and sentencing policies, and the human rights abuses that emerge as a consequence.

According to the Report, "The statistics confirm the Special Rapporteur's own observations with regard to the framework of violence against women in United States prisons. The United States is criminalizing a large segment of its population; this segment is overwhelmingly composed of poor persons of colour and is increasingly female. This criminalization leads to overcrowding in prisons. The Special Rapporteur believes that this situation not only arises from, but also may result in unequal protection. People with a criminal record may in some states be denied welfare, housing, custodial rights to their children and access to social services. The Special Rapporteur also believes that many of the drug-related offences for which women are incarcerated in the United States may be more appropriately handled by a community-based system of welfare and social support, as is presently the case in certain European countries." (at para. 17)

The Special Rapporteur states "the primary reason why such a large number of women are in prison is drugs. The Special Rapporteur came across many cases in her interviews with prisoners that illustrated the callousness with which drug laws were applied." (at para. 18)

"It is the Special Rapporteur's belief that there should be a policy review of the impact of drug laws on women, especially 'mules'. ...Such discussions should be encouraged and a thorough national review of the process may highlight the inequalities in the legislation with regard to women." (at para. 20) She is also critical of mandatory minimum drug sentences, stating that such sentences are "clearly the reason why 70 per cent of the women in California prisons are incarcerated for non-violent offences." (at para. 83) She is also critical of "three-strikes" legislation (at para. 83)

One of her key recommendations is that various US government agencies should examine "Drug laws and their severe impact on women" (at para. 206a)

1.8 Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

Commission on Human Rights 'Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74' (24 December 1996) UN Doc. E/CN.4/1997/60 at para. 91,

"[T]he death penalty should be eliminated for crimes such as economic crimes and drug-related offences. In this regard, the Special Rapporteur wishes to express his concern that certain countries, namely China, the Islamic Republic of Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences."

2. EUROPEAN COURT OF HUMAN RIGHTS

Khudobin v. Russia (Application no. 59696/00) Judgment of 26 October 2006.

The applicant was an imprisoned injection drug user who “suffered from many chronic diseases, such as epilepsy, pancreatitis, chronic viral hepatitis B and C, as well as various mental deficiencies.” (at para. 22). He was also found to be living with HIV when tested upon admission to prison. “While in detention, the applicant suffered from acute pneumonia, epileptic seizures, bronchitis, hepatitis, pancreatitis, and other serious diseases.” (at para. 26) The applicant alleged that the failure of the State to provide a proper standard of medical care contributed to conditions that violated Article 3.

The Court accepted that “the applicant had epileptic seizures but did not receive qualified and/or timely medical assistance. Throughout his detention the authorities failed to monitor his chronic diseases and provide adequate medicinal treatment, which aggravated his health condition and increased his vulnerability to other illnesses, namely repetitive pneumonias...In July 1999 he fell ill with bronchopneumonia but did not receive treatment until ten days later.” (at para. 89) The Court therefore found a breach of Article 3. “[T]he applicant was HIV-positive and suffered from a serious mental disorder. This increased the risks associated with any illness he suffered during his detention and intensified his fears on that account. In these circumstances the absence of qualified and timely medical assistance, added to the authorities' refusal to allow an independent medical examination of his state of health, created such a strong feeling of insecurity that, combined with his physical sufferings, it amounted to degrading treatment within the meaning of Article 3.” (at para. 96)

Of potential significance is the fact that that in the judgment, the Court arguably undermines the “principle of equivalence” between prison health care and community health care. “The Court accepts that the medical assistance available in prison hospitals may not always be at the same level as in the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance.” (at para. 93)

Based upon the approach in *Vanyan v Russia* (see below), the Court also found a violation of Article 6(1) in that the charge on which the applicant was imprisoned stemmed from a police operation in which the applicant was asked by undercover officers to obtain drugs for them. “Domestic law should not tolerate the use of evidence obtained as a result of incitement by State agents. If it does, domestic law does not in this respect comply with the “fair-trial” principle”. (at para. 133)

Wainwright v. The United Kingdom (Application no. 12350/04) Judgment of 26 September 2006.

The case concerns the strip searching and examination of a mother and her mentally disabled son who were attempting to visit another brother in prison. The prison alleged that the incarcerated sibling was selling drugs in the prison, and therefore that his visitors were reasonably subject to strip searching. The applicants alleged their treatment was contrary to Articles 3 and 8.

The State contended that, among other things, there was no violation as “the search was carried out in good faith for the legitimate object of searching for drugs in a prison with a serious drugs problem” and that “while it was true that the applicants had not previously been caught bringing in drugs or even visited before it remained the case that visitors were a major source of drugs and all sorts of unlikely visitors had been known to bring in drugs”

(at paras. 36—37). “The Government further argued that the searches were proportionate, serving the purpose of preventing crime and protecting the health of prisoners. There was a serious drugs problem, visitors were suspected of bringing in drugs and there were reasonable grounds for believing that their relative had been obtaining illicit drugs. A balance had to be struck between the potential rights of visitors and the rights of others to be protected from drugs in which a wide margin of appreciation ought to be afforded.” (at para. 40)

The Court’s approach was that it had “no reason to doubt the Government’s contention that there was an endemic drugs problem in the prison and that the prison authorities had a suspicion that the applicants’ relative had been taking drugs. In these circumstances the Court considers that the searching of visitors may be considered as a legitimate preventive measure. It would emphasise nonetheless that the application of such a highly invasive and potentially debasing procedure to persons who are not convicted prisoners or under reasonable suspicion of having committed a criminal offence must be conducted with rigorous adherence to procedures and all due respect to their human dignity.” (at para. 44)

While the Court “accepted...that the search pursued the aim of fighting the drugs problem in the prison...it is not satisfied that the searches were proportionate to that legitimate aim in the manner in which they were carried out. Where procedures are laid down for the proper conduct of searches on outsiders to the prison who may very well be innocent of any wrongdoing, it behoves the prison authorities to comply strictly with those safeguards and by rigorous precautions protect the dignity of those being searched from being assailed any further than is necessary. They did not do so in this case.” (at paras. 47—48)

The Court concluded that while the searches in question did not reach the threshold of an Article 3 violation, they did violate Article 8.

Jalloh v. Germany (Application no. 54810/00) Judgment of 11 July 2006.

The applicant was arrested by police on suspicion of selling heroin on the street. The police claimed that the applicant swallowed a small balloon of heroin as he was being arrested. They took him to the hospital and, when the applicant “refused to take the medication necessary to provoke vomiting, he was held down and immobilised by four police officers. The doctor then forcibly administered to him a salt solution and the emetic Ipecacuanha syrup through a tube introduced into his stomach through the nose...As a result, the applicant regurgitated one bubble containing 0.2182 grams of cocaine.” (at para. 13) Based upon this evidence he was convicted of trafficking.

The Court found that the treatment constituted a breach of Article 3. “The authorities subjected the applicant to a grave interference with his physical and mental integrity against his will. They forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could equally have obtained by less intrusive methods. The manner in which the impugned measure was carried out was liable to arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him. Furthermore, the procedure entailed risks to the applicant’s health, not least because of the failure to obtain a proper anamnesis beforehand. Although this was not the intention, the measure was implemented in a way which caused the applicant both physical pain and mental suffering. He therefore has been subjected to inhuman and degrading treatment contrary to Article 3.” (at para. 82)

The Court also found a violation of Article 6. As the incriminating evidence was obtained in a manner that violated Article 3 prohibitions against inhuman or degrading treatment, “the Court finds that the use in evidence of the drugs obtained by the forcible administration of emetics to the applicant rendered his trial as a whole unfair” (at para. 108). However, the Court was also explicit that even if there had not been treatment found in breach of Article

3, it still would have found a violation of Article 6. “[T]he Court would also have been prepared to find that allowing the use at the applicant’s trial of evidence obtained by the forcible administration of emetics infringed his right not to incriminate himself and therefore rendered his trial as a whole unfair.” (at para. 122)

While this is a good decision, and particularly significant in terms of the Court’s Article 6 jurisprudence, it is not without concern. In assessing whether the treatment of the applicant violated Article 3, the Court brought into its analysis the fact that the quantity of drugs was so small. This begs the question of whether the Court would find such treatment acceptable if a larger quantity of drugs was involved, or if there is a sliding scale of inhuman or degrading treatment in this sense? Indeed, this is a problem in the Court’s approach in this case that is highlighted in both the concurring and dissenting opinions.

Both the concurring and dissenting opinions are interesting in this case. Of particular note is the Joint Dissenting Opinion of Judges Ress, Pellonpää, Baka and Sikuta. The Judges state they “accept that the treatment to which the applicant was subjected was harsh. However, anyone engaging in drug-trafficking must take into account the possibility of being subjected to law-enforcement measures which are far from pleasant. The measures applied in this case in our view do not reach the threshold of inhuman or degrading treatment within the meaning of Article 3.”

Vanyan v. Russia (Application no. 53203/99) Judgment of 15 December 2005.

The applicant was convicted of supplying heroin to a person (aka OZ). OZ approached the applicant to purchase drugs at the request of police, and given money by the police to do so. The applicant alleged a violation of Article 6 as “he had been convicted of an offence which had been incited by the police and that his conviction was based on evidence from the police officers involved and from OZ, an individual acting on their instructions.” (at para. 43)

In considering the case, the Court emphasised that “The use of undercover agents must be restricted and safeguards put in place even in cases concerning the fight against drug trafficking. The requirements of a fair criminal trial under Article 6 entail that the public interest in the fight against drug trafficking cannot justify the use of evidence obtained as a result of police incitement... Where the activity of undercover agents appears to have instigated the offence and there is nothing to suggest that it would have been committed without their intervention, it goes beyond that of an undercover agent and may be described as incitement. Such intervention and its use in criminal proceedings may result in the fairness of the trial being irretrievably undermined” (at paras. 46—47).

The Court found the State in breach of Article 6, stating “There is no evidence to suggest that before the intervention by OZ the police had reason to suspect that the applicant was a drug dealer... There is nothing to suggest that the offence would have been committed had it not been for the above intervention of OZ. The Court therefore concludes that the police incited the offence of procuring drugs at OZ’s request. The applicant’s conviction... was based mainly on evidence obtained as a result of the police operation, including the statements by OZ and police officers... Thus, the police’s intervention and the use of the resultant evidence in the ensuing criminal proceedings against the applicant irretrievably undermined the fairness of the trial.” (at para. 49)

Enhorn v. Sweden (Application no. 56529/00) Judgment of 25 January 2005.

The applicant was an HIV-positive gay man who was accused of infecting one of his sexual partners. He was ordered detained under Sweden’s *Infectious Diseases Act* as it was alleged that his behaviour represented a public health risk. The applicant challenged the legality of the confinement order under Article 5(1). The Court examined “whether the

deprivation of the applicant's liberty amounted to 'the lawful detention of a person in order to prevent the spreading of infectious diseases' within the meaning of Article 5 § 1 (e) of the Convention...[and] is therefore called upon to establish which criteria are relevant when assessing whether such a detention is in compliance with the principle of proportionality and the requirement that any detention must be free from arbitrariness." (at paras. 40—41)

Building upon principles established in previous cases, "the Court finds that the essential criteria when assessing the 'lawfulness' of the detention of a person 'for the prevention of the spreading of infectious diseases' are whether the spreading of the infectious disease is dangerous to public health or safety, and whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest. When these criteria are no longer fulfilled, the basis for the deprivation of liberty ceases to exist." (at para. 44)

Although agreeing that HIV represented a risk to public health, it found that the applicant's detention was in violation of Article 5(1). "[T]he Court finds that the compulsory isolation of the applicant was not a last resort in order to prevent him from spreading the HIV virus because less severe measures had been considered and found to be insufficient to safeguard the public interest. Moreover, the Court considers that by extending over a period of almost seven years the order for the applicant's compulsory isolation, with the result that he was placed involuntarily in a hospital for almost one and a half years in total, the authorities failed to strike a fair balance between the need to ensure that the HIV virus did not spread and the applicant's right to liberty." (at para. 55)

McGlinchey and others v. The United Kingdom (Application no. 50390/99)
Judgment of 29 April 2003.

The applicants were the parents of a heroin dependent woman who died in a UK prison while serving a four-month sentence for theft. They alleged an Article 3 violation for the State's failure to provide adequate health care to the woman while in detention, including failure to properly treat her withdrawal symptoms from heroin.

While the applicants alleged that Lofexidine (to relieve her withdrawal symptoms) was withheld from the prisoner as punishment, the Court disagreed finding that the medical records indicated this decision was made on proper medical grounds due to a drop in her blood pressure. However, the Court did find the UK in breach of its Article 3 obligations based upon "the responsibility owed by prison authorities to provide the requisite medical care for detained persons" (at para. 57).

Although the Court did not specifically state that the woman died from withdrawal, the symptoms described certainly point to heroin withdrawal as a contributor. According to the Court: "The evidence indicates...that by the morning of 14 December 1998 Judith McGlinchey, a heroin addict whose nutritional state and general health were not good on admission to prison, had suffered serious weight loss and was dehydrated. This was the result of a week of largely uncontrolled vomiting symptoms and an inability to eat or hold down fluids. This situation, in addition to causing Judith McGlinchey distress and suffering, posed very serious risks to her health, as shown by her subsequent collapse." (at para. 57)

Landvreugd v. The Netherlands (Application no. 37331/97) Judgment of 4 June 2002.

The applicant was an active IDU who was issued with a 14-day order prohibiting him from entering a certain section of Amsterdam where he had been observed by the police on

several occasions “overtly us[ing] hard drugs” (at para. 10), which presumably means injecting in public.

The applicant challenged the prohibition order in the domestic courts on the grounds that 1) he lived in the area from which he was excluded, as well as receiving social services and social welfare from offices in that neighbourhood, and b) because “the prohibition order could not be considered as having a legal basis in that the emergency powers...under the Municipality Act were intended for emergency situations...[and]...the legislature had never intended structural nuisance caused by drug abusers to be considered as creating an emergency situation.” (at para. 13).

Losing in the domestic courts he appealed to the European Court. The Court found that the prohibition order did not violate Article 2 of Protocol No. 4 (freedom of movement) as it was not disproportionate and fell within the State’s margin of appreciation. It also found no violation under Article 8 (right to private and family life).

See also *Olivieira v. The Netherlands* (Application no. 33129/96) Judgment of 4 June 2002, which is essentially an identical case with the same decision issued the same day by the Court.

Witold Litwa v. Poland (Application no. 26629/95) Judgment of 4 April 2000.

The applicant in this case was a blind, disabled man who was picked up by police and taken to a “sobering-up centre” following an argument with a post office clerk. He claimed that he had been detained in the sobering-up centre unlawfully and arbitrarily. The State claimed its actions were consistent with Article 5(1)(e) which permits the “lawful detention of...alcoholics”.

“The applicant maintained that from the medical point of view it had never been possible to say that a single instance of intoxication was equivalent to ‘alcoholism’... [and] argued that ‘intoxicated persons’ could not be identified with “alcoholics” since the latter term – both in its scientific and lay usage – denoted persons addicted to and dependent on alcohol, not temporarily under its influence... [and] went on to argue that a narrow interpretation should be given to the Convention terms, especially those relating to the exceptions to the rule of personal liberty.” (at paras. 52—53) “The Government...accepted that this term should be understood as covering not only persons with a defined psychiatric condition of alcohol dependency but also those occasionally intoxicated.” (at para. 54)

“The Court observes that the word ‘alcoholics’, in its common usage, denotes persons who are addicted to alcohol. On the other hand, in Article 5 § 1 of the Convention this term is found in a context that includes a reference to several other categories of individuals, that is, persons spreading infectious diseases, persons of unsound mind, drug addicts and vagrants. There is a link between all those persons in that they may be deprived of their liberty either in order to be given medical treatment or because of considerations dictated by social policy, or on both medical and social grounds. It is therefore legitimate to conclude from this context that a predominant reason why the Convention allows the persons mentioned in paragraph 1 (e) of Article 5 to be deprived of their liberty is not only that they are dangerous for public safety but also that their own interests may necessitate their detention” (at para. 60).

The Court found that the applicant’s detention did not violate Article 5.

“The Court considers that, under Article 5 § 1 (e) of the Convention, persons who are not medically diagnosed as ‘alcoholics’, but whose conduct and behaviour under the influence of alcohol pose a threat to public order or themselves, can be taken into custody for the

protection of the public or their own interests, such as their health or personal safety...That does not mean that Article 5 § 1 (e) of the Convention can be interpreted as permitting the detention of an individual merely because of his alcohol intake. However, the Court considers that in the text of Article 5 there is nothing to suggest that this provision prevents that measure from being applied by the State to an individual abusing alcohol, in order to limit the harm caused by alcohol to himself and the public, or to prevent dangerous behaviour after drinking. On this point, the Court observes that there can be no doubt that the harmful use of alcohol poses a danger to society and that a person who is in a state of intoxication may pose a danger to himself and others, regardless of whether or not he is addicted to alcohol." (at para. 61—62)

Baghli v. France (Application no. 34374/97) Judgment of 30 November 1999.

The applicant, an Algerian national, was ordered excluded from French territory for ten years due to convictions under legislation on dangerous drugs. He alleged that his exclusion would interfere with his family life within the meaning of Article 8, as he was involved in a relationship with a French national and all of his siblings were French nationals.

While "the Court has no doubt that the temporary exclusion order amounts to an interference with the applicant's right to respect for both his private and his family life" (at para. 37), it found that the applicant's exclusion did not violate Article 8. The Court found that the exclusion pursued legitimate aims under the Convention, including the "prevention of...crime", and the "protection of health" (at para. 40). It also found that the applicant's conviction for heroin distribution "indisputably constituted a serious breach of public order and undermined the protection of the health of others. In view of the devastating effects of drugs on people's lives, the Court understands why the authorities show great firmness with regard to those who actively contribute to the spread of this scourge." (at para. 48)

"In the light of the foregoing, the Court considers that the ten-year exclusion order was not disproportionate to the legitimate aims pursued. There has therefore been no violation of Article 8." (at para. 49).

Teixeira de Castro v. Portugal (Application no. 44/1997/828/1034) Judgment 9 June 1998.

The applicant was convicted of supplying a quantity of heroin to undercover police officers. He alleged that his fair trial rights under Article 6 had been violated as he was incited into committing the offence, and only did so after the undercover police pressured a third party to go to him and request the drugs. He alleged that "the undercover agent's action created a criminal intent that had previously been absent" (at para. 32). The applicant "maintained that he had no previous convictions and would never have committed the offence had it not been for the intervention of those '*agents provocateurs*'. In addition, the police officers had acted on their own initiative without any supervision by the courts and without there having been any preliminary investigation." (at para. 31) The Government defended "the use of special investigative measures, in particular in the fight against drug trafficking" arguing that "Society had to find techniques for containing that type of criminal activity, which destroyed the foundations of democratic societies." (at para. 32)

The Court found the State in violation of Article 6(1), and that the fight against drugs did not absolve State obligations in this regard. "The use of undercover agents must be restricted and safeguards put in place even in cases concerning the fight against drug trafficking. While the rise in organised crime undoubtedly requires that appropriate measures be taken, the right to a fair administration of justice nevertheless holds such a prominent place that it cannot be sacrificed for the sake of expedience." (at para. 36) "[T]he Court concludes

that the two police officers' actions went beyond those of undercover agents because they instigated the offence and there is nothing to suggest that without their intervention it would have been committed. That intervention and its use in the impugned criminal proceedings meant that, right from the outset, the applicant was definitively deprived of a fair trial." (at para. 39)

Dalia v. France (Application no. 154/1996/773/974) Judgment of 19 February 1998.

The applicant, an Algerian national, was permanently excluded from French territory for convictions under legislation on dangerous drugs for heroin. She alleged that the failure of the French courts to lift this exclusion interfered with her family life within the meaning of Article 8, as she had a French-born child, all her siblings were French nationals and her mother a French resident.

The Court agreed that her exclusion "amounted to an interference with her right to respect for her private and family life." (at para. 45) However, it also agreed that "the interference in question sought to achieve an aim which was wholly compatible with the Convention, namely 'the prevention of disorder or crime'." (at para. 48)

In weighing the family ties versus the criminal conviction, the Court put significant weight on the drug issue. "[T]he exclusion order made as a result of her conviction was a penalty for dangerous dealing in heroin. In view of the devastating effects of drugs on people's lives, the Court understands why the authorities show great firmness with regard to those who actively contribute to the spread of this scourge. Irrespective of the sentence passed on her, the fact that Mrs Dalia took part in such trafficking still weighs as heavily in the balance." (at para. 54) The Court concluded that "the refusal to lift the exclusion order made against the applicant cannot be regarded as disproportionate to the legitimate aim pursued. There has therefore been no violation of Article 8." (at para. 55)

El Boujaïdi v France (Application no. 123/1996/742/941) judgment of 26 September 1997.

The applicant, a Moroccan national, was permanently excluded from French territory for convictions under legislation on dangerous drugs for heroin. He alleged that the failure of the French courts to lift this exclusion interfered with her family life within the meaning of Article 8, as his parents and siblings were all legally resident in France.

"[T]he Court is in no doubt that enforcement of the exclusion order amounted to interference with the applicant's right to respect for his private and family life." (at para. 33) However, it also accepted that "the interference in question sought to achieve aims which are wholly compatible with the Convention, namely 'the prevention of disorder or crime'." (at para. 36) The Court found that the exclusion order was not a disproportionate response, and therefore not in violation of Article 8.

3. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Luis Rolando Cuscul Pivaral et al. v. Guatemala, Case 642/03, Report No. 32/05, Inter-Am. C.H.R., OEA/Ser.L/V/II.124 Doc. 5 (2005).

In this case on admissibility, a group of people living with HIV/AIDS took action against the Government of Guatemala to try and gain access to universal treatment. They allege that "the State is not fulfilling its responsibility to respect and to adequately protect the rights to

life, physical integrity, and health of the 49 individuals identified.” The Commission considered whether “the State has a positive obligation to provide antiretroviral treatment”. The Commission found that the case was admissible and that it had the competency to consider the case. No judgment on the consideration of the case on the merits has yet been published.

4. EUROPEAN DOMESTIC SYSTEMS

4.1 United Kingdom

Dr John Adrian Garfoot v. The General Medical Council (Privy Council Appeal No. 81 of 2001) 19th June 2002

The appellant, a physician specialising in drug treatment, appealed a decision of the Medical Council finding him guilty of serious professional misconduct and ordering his name removed from the Medical Register. This sanction came as the result of his prescribing controlled drugs (named as injectable methadone, Dexedrine, injectable Diazepam and Benzodiazepines) to “drug-addicted patients”.

The doctor argued “his prescribing clinically appropriate for intractable and damaged addicts. In no case was harm caused to a patient and there was no reliable evidence of significant diversion of prescribed drugs. There was a clear benefit both to the patients and public...[H]e had attempted to fill a gap in NHS provision for patients who were difficult to manage...The [Medical] Committee failed to take sufficient account of the context of the appellant’s practice and the clear benefits to the patients and public. This included the long term treatment of drug addicts with a 7.5% detoxification success and a low mortality rate and the benefit to patients from being treated at a clinic and not having recourse to street drugs.” (at paras. 8—10)

The decision of the Medical Council was upheld and the appeal dismissed, in part because the Privy Council seemed to question the value of long term substitution treatment. For example, they stated that “The appellant...failed to grasp opportunities to help patients change their habits or, on the other hand, to face the reality that their ‘treatments’ had failed and that the appellant could no longer properly accede to their requests [for treatment].” (at para. 13) Also, “Their Lordships cannot accept the argument that the patients did not suffer harm. Where there was no attempt at stabilisation on oral preparations and no attempt to engage patients other than by maintenance prescribing there was inevitable harm to such patients.” (at para. 15)

The Queen on the Application of John Shelley v. Secretary of State for the Home Department [2005] EWCA Civ 1810.

UK Court of Appeals rules against a prisoner seeking to gain access to sterile syringes. The applicant claimed that failure to provide access to sterile injecting equipment was in violation of Articles 2, 3 and 8 of the European Convention on Human Rights. This case is currently preparing to be heard before the European Court.

See also lower court judgment *John Shelley v The Secretary of State for the Home Department* (2005), Case No. CO/5613/2004.

5. JOURNAL ARTICLES

Aoyagi, Melissa T. (2005) 'Beyond Punitive Prohibition: Liberalizing the Dialogue on International Drug Policy' 37 *NYU Journal of International Law & Policy* 555

"This paper represents an effort to clarify the permissible legal confines for the debate over international drug policy and to encourage a more liberal dialogue between the advocates of punitive prohibition and those of its alternatives." It examines the effects of the UN drug conventions on states' attempts to explore alternatives to the punitive and prohibitionist drug policies, examines prohibition and various non-prohibitionist options as well as the potential effects of various policy choices, considers the proper role, if any, that the UN treaties permit non-prohibitionist policies to play in the modern international context, and proposes changes to the vocabulary of the drug policy dialogue to encourage clarity and foster the emergence of new ideas in the drug policy debate.

Blumenson, Eric (2002) 'Recovering from Drugs and the Drug War: An Achievable Public Health Alternative' 6 *Journal of Gender, Race and Justice* 225.

This article argues for creation of a law described as "drug profits for drug treatment" which would (1) mandate drug treatment instead of incarceration for low-level drug offenders, (2) finance treatment by redirecting assets seized and forfeited from drug offenders into a Treatment Trust Fund, and (3) repeal laws that currently channel these assets into the police forces that seized them and thereby make the agencies dependent on drug enforcement to maintain their budgets.

Burris, Scott & Villena, Daniel (2004) 'Adapting to the Reality of HIV: Difficult Policy Choices in Russia, China, and India' 31 *Human Rights* 10.

This article examines the impact of the criminalization of both drug use and prostitution on the spread of HIV/AIDS, with a particular focus on Russia, China and India. It argues that "Controlling HIV/AIDS requires a thorough, ongoing reassessment of sex and drug laws."

Doherty, Joan M. (February 2006) 'Form Over Substance: The Inadequacy of Informed Consent and Ethical Review for Thai Injection Drug Users enrolled in HIV Vaccine Trials' *Pacific Rim Law and Policy Journal* 101.

"A clinical trial of a vaccine designed to prevent the spread of the HIV raises important legal and ethical questions because injection drug users who were believed to be unsuitable subjects for study in the United States were singled out for research in Thailand. The protections for human subjects must not be compromised when U.S. pharmaceutical companies conduct research abroad, particularly where clinical trials are conducted in vulnerable populations...Countries that host research sponsors, as well as countries that host research volunteers, must share the responsibility of protecting human subjects. To strengthen the protections for human subjects, Thailand should enact comprehensive national legislation, and existing legislative protections in the United States should be expanded to reflect the increasingly international scope of biomedical research."

Elliott, Richard (2004) 'Drug Control, Human Rights, and Harm Reduction in the Age of AIDS' 9(3) *HIV/AIDS Policy & Law Review* 86.

This article is an abridged version of a paper prepared for "Human Rights at the Margins:

HIV/AIDS, Prisoners, Drug Users and the Law,” a satellite meeting held in Bangkok on 9 July 2004, and organized by the Canadian HIV/AIDS Legal Network and the Lawyers Collective HIV/AIDS Unit (India). It briefly outlines the impact of these two different policy approaches, examines international law on drug control, discusses how harm reduction reflects a human rights-based approach to drugs, and assesses some strategies for reforming global policy on illicit drugs.

Elliott, Richard, *et al.* (2005) ‘Harm Reduction, HIV/AIDS, and the Human Rights Challenge to Global Drug Control Policy’ 8(2) *Health and Human Rights* 104.

“The global HIV/AIDS pandemic, and the role of unsafe drug injection as one of its principal drivers, have added to the list of harms associated with unsafe drug use. HIV/AIDS has highlighted ways in which prohibitionist drug policy causes or contributes to such harms and focused attention on the international regime of illicit drug control. At the same time, HIV/AIDS has catalyzed the ‘health and human rights movement’ to articulate legal and policy responses that both represent sound public health policy and fulfill human rights obligations recognized in international law; this necessarily includes scrutinizing the interpretation and implementation of the UN drug control conventions. This article brings together public health evidence and legal analysis as a contribution toward changing the global drug control regime to a more health-friendly, human rights-based system.”

Gilmore, Norbert (1996) ‘Drug Use and Human Rights: Privacy, Vulnerability, Disability, and Human Rights Infringements’ 12 *Journal of Contemporary Health Law & Policy* 355.

This article broadly addresses the issue of the human rights of people who use drugs, including an analysis of situations in which their rights are likely to be infringed.

Gostin, Lawrence O. & Lazzarini, Zita (1997) ‘Prevention of HIV/AIDS among Injection Drug Users: The Theory and Science Of Public Health and Criminal Justice Approaches to Disease Prevention’ 46 *Emory Law Journal* 587.

This article reviews the law, ethics and science surrounding the availability of syringe exchange programmes in the US. It takes a view that “the prevailing approach should inflict the least amount of harm to IDUs and the wider community...[and] that empirical observations, grounded in the scientific method, should be the primary means for measuring the efficacy and consequences of the criminal justice and public health approaches.” The article surveys the legal landscape that led to the prevailing criminal justice approach to drug use, and suggests a theoretical framework for assessing the issues at the interface of criminal justice and public health. It presents data showing the projected health benefits from increased access to syringe exchange, data demonstrating the health benefits of laws that authorize syringe exchange and data suggesting an absence of harm from increased access to syringes. It examines various legal questions related to the provision of syringe exchange in the US, and proposes a series of legal reforms.

Kay, Amanda (2002) ‘The Agony of Ecstasy: Reconsidering the Punitive Approach to United States Drug Policy’ 29 *Fordham Urban Law Journal* 2133.

Part I of this article discusses the history and development of harm reduction versus the punitive approach to drugs. It then examines Ecstasy's evolution as a popular recreational drug and the legislation that has been drafted specifically in response to its growing

popularity in the United States. It contrasts various policy approaches to Ecstasy, exploring the advantages and disadvantages of each, and argues that Ecstasy policy should be revamped to reflect a primarily harm reduction approach including legalizing Ecstasy with strict government regulation. In the alternative, Ecstasy should be reclassified as a schedule III substance and the Federal Sentencing Guidelines should be amended to repeal recent sentence increases for Ecstasy trafficking. Concurrent with reforming penalty-oriented legislation, Congress should, as its first priority, increase harm reducing measures such as treatment, education, and "safer-use" programs for current users.

Lines, Rick (2007) 'Injecting Reason: Prison Syringe Exchange and Article 3 of the European Convention on Human Rights' 1 *European Human Rights Law Review* 66.

This article examines the European Court's case law on Article 3 (prohibition of inhuman or degrading treatment) and argues that the jurisprudence can be used to argue for the right of prisoners to access sterile injecting equipment.

Lines, Rick (2006) 'From equivalence of standards to equivalence of objectives: The entitlement of prisoners to health care standards higher than those outside prisons' 2/4 *International Journal of Prisoner Health* 269.

It is generally accepted that people in prison have a right to a standard of health care equivalent to that available outside of prisons. This "principle of equivalence" is one that enjoys broad consensus among international health and human rights instruments and organisations. However, given the extreme health problems evident in prisons worldwide, the legal obligations of States to safeguard the lives and well-being of people it holds in custody and the implications of poor prison health on overall public health, this article suggests that – even if achieved – standards of prison health care only equivalent to that in the community would in some cases fall short of human rights obligations and public health needs. This article argues it is time to move beyond the concept of equivalent standards of health care, and instead promote standards that achieve equivalent objectives. In some circumstances, meeting this new standard will require that the scope and accessibility of prison health services be higher than that outside of prisons.

Malkin, Ian (2001) 'Establishing Supervised Injecting Facilities: A Responsible Way to Help Minimise Harm' 25 *Melbourne University Law Review* 680.

Based on the situation in Australia, this article argues that changes in drug policy, including the introduction of supervised injecting facilities, must be initiated, in order to achieve harm reduction objectives and promote good individual and public health. It considers various approaches adopted in response to drug use, from prohibitionist to more multifaceted. It reviews the common arguments made against the introduction of supervised injecting facilities, and argues that human rights law, as well as the success of SIFs in Europe, demand the piloting of such facilities.

Maskas, Maria L. (2005) 'Trafficking Drugs: Afghanistan's Role in Russia's Current Drug Epidemic' 13 *Tulsa Journal of Comparative and International Law* 141.

"This comment examines Russia's drug trafficking crisis. Part II will provide an overview of the trafficking problem and address the three-fold support system for trafficking drugs into Russia. It will discuss where and how the drugs are produced, how the drugs are smuggled

into Russia, and who takes control of the drugs once inside the country. It will also discuss other issues occurring in Russia due to the trafficking crisis, such as drug abuse and the fast growing HIV/AIDS epidemic. Part III examines how Russia is combating drug trafficking through different agencies and Russian laws, and investigates the cooperation Russia receives from other countries under international conventions enacted to help control the drug flow. Part IV provides possible solutions and recommendations to Russia's drug crisis, including establishing tighter border patrol alliances with neighboring countries, reconstructing the already existing drug control law systems, controlling the growing population of drug users in Russia, and helping Afghanistan create new options for income in order to diminish or eliminate opium production."

Paltrow, Lynn M. (2001) 'The War on Drugs and the War on Abortion: Some Initial Thoughts on the Connections, Intersections and the Effects' 28 *Southern University Law Review* 201.

This article explores the historical, political and ideological parallels between efforts to control drugs and those to control women's reproductive choices. It argues there are "many connections and overlaps between the two. Their history, the strategies used to control and punish some reproductive choices and those to control the use of certain drugs, the limitations that exist to access to reproductive health care and drug treatment, and the populations most harmed by those limitations are remarkably similar. These similarities are particularly apparent where the issues coalesce in the regulation and punishment of pregnant, drug-using women."

Schmoke, Kurt (2001) 'Forging a New Consensus in the War on Drugs: Is it Possible?' 10 *Temple Political and Civil Rights Law Review* 351.

Text of an address given by the former Mayor of Baltimore at the symposium *U.S. Drug Laws: The New Jim Crow?* As Mayor, Schmoke pioneered the use of syringe exchange programs. He arrived at this decision after a frank evaluation of US drug policy based on three inquiries: first, whether we have won the war on drugs; second, whether the present system is adequately addressing public health concerns; and third, whether continuation of a prohibition/law enforcement focus on the problem would provide a solution to these problems. Concluding that all questions required a negative reply, Mayor Schmoke attempted to persuade Maryland policymakers to augment their current approaches with a syringe exchange program. He argues in the address that "the war on drugs...is our domestic Vietnam. And it lacks rationale. It lacks a sound basis in policy. And it is time for a different direction. It has gone on far, far too long."

Stone, Lesley & Gostin, Lawrence O. (2004) 'Using Human Rights to Combat the HIV/AIDS Pandemic' 31 *Human Rights* 2.

"The HIV/AIDS pandemic presents a stark example of the nexus between human rights and health. This first became evident when government responses to HIV/AIDS subjected people living with the disease to violations of their rights to liberty, privacy, freedom of association, nondiscrimination, and equality before the law. Early on, advocates began to look to human rights law to protect the rights of people who were infected and to ensure that government responses to the HIV/AIDS pandemic were based on science rather than stereotypes and stigma. As the pandemic has progressed, it has become apparent that human rights law is relevant not only to the treatment of infected individuals but also to wider policies that influence vulnerability to HIV/AIDS, as populations that are discriminated against, marginalized, and stigmatized are at a greater risk of contracting the disease. A central tool in fighting the pandemic therefore must be to strengthen the recognition of the human rights of all people. International human rights law can indeed serve as a powerful

mechanism to influence domestic law and policy regarding HIV/AIDS. The human rights framework is also one of the few avenues the international community can use to examine what goes on within a state's borders, especially regarding health policy. This scrutiny by outside actors pressures national governments to change their practices and is one mechanism through which international consensus on the content of each right is built."

'Symposium: Towards a Compassionate and Cost-Effective Drug Policy: A Forum on the Impact of Drug Policy on the Justice System and Human Rights' (1997) 24 *Fordham Urban Law Journal* 315.

Proceedings of a panel discussion on reconsidering drug prohibition.